(15)

Supreme Court, U.S.
FILED
JUN 19 1998
CLERK

No. 97-1121

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

CITY OF CHICAGO,
Petitioner,
v.
JESUS MORALES, *et al.*,
Respondent.

On Writ of Certiorari to the Supreme Court of Illinois

BRIEF OF THE CENTER FOR THE COMMUNITY INTEREST AS AMICUS CURIAE IN SUPPORT OF PETITIONER

RICHARD K. WILLARD *
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

ROGER L. CONNER
Executive Director
CENTER FOR THE
COMMUNITY INTEREST
919 18th Street, N.W.
Suite 700
Washington, D.C. 20006
(202) 785-7844

* Counsel of Record
for *Amicus Curiae*

June 19, 1998

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

33pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF THE AMICUS CURIAE	1
STATEMENT OF THE CASE	3
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
I. CRIMINAL STREET GANGS POSE AN INCREASINGLY SERIOUS THREAT TO COMMUNITIES AND LAW-ABIDING CITIZENS. INCREASED GANG PRESENCE AND VIOLENCE DESTROY COMMUNITY STABILITY BY PRESSURING LAW-ABIDING RESIDENTS TO RETREAT INTO THEIR HOMES OR INTO FORTRESS GATED COMMUNITIES	6
A. Nationwide, Communities Are Increasingly Vulnerable To A Gang Presence Growing In Scope And Number	7
B. Law-Abiding Residents Of Gang-Ridden Neighborhoods Face An Increased Threat Of Serious And Lethal Gang Violence	8
C. Increased Gang Presence And Violence Undermine Community Stability By Weakening Social Order-Preserving Mechanisms	12
1. Visible Community Disorder Induced By Gangs Reduces The Ordinary Reputational Price Of Crime, Discourages Private Enforcement Initiatives, And Engenders Disrepect For Existing Public Enforcement	12

TABLE OF CONTENTS—Continued

Page

2. Vulnerable Communities Face A Self-Perpetuating Cycle Of Youth Gang Membership And Attendant Violence From Self-Reinforcing Perceptions Of High Criminality 14

D. Increased Gang Presence And Violence Pressure Many Law-Abiding Communtiy Residents To Retreat Into Their Homes Or Fortress-Like Gated Communities, Leaving Neighborhoods Increasingly Vulnerable To A Downward Spiral Of Disorder 15

II. ANTI-LOITERING ORDINANCES ARE A REASONABLE MIDDLE GROUND RESPONSE TO INCREASING GANG VIOLENCE THAT WORK BY SECURING ORDER NORMS AND STRENGTHENING THE ENTIRE COMMUNITY 18

A. Nationwide, Communities Like Chicago Are Seeking New And Effective Ways To Resist The Increasingly Serious Threat Of Gang Violence 18

B. Order Maintenance Policing Effectively And Efficiently Deters And Prevents More Serious Crime By Reinforcing Extant Community Law-Abiding Norms 21

C. Anti-Loitering Ordinances Reinforce Public Order Norms Of No Tolerance For Gang Activity 23

D. Anti-Loitering Ordinances Strike An Effective Balance Because They Are More Efficient Than Harsher Penalties, With Fewer Economic And Social Costs To The Community.. 24

E. The Ordinance Is An Integral Part Of Community-Wide Efforts To Resist Gangs 26

CONCLUSION 27

TABLE OF AUTHORITIES

CASES Page

City of Norwalk v. Orange Street Locos, No. VC-016746 (Cal. App. Dep't Super. Ct. Aug. 25, 1994) 20

People ex rel. Gallo v. Acuna, 929 P.2d 596 (Cal. 1997) 20

MISCELLANEOUS

Bureau of Justice Statistics, U.S. Dept of Justice, *Students Reports of School Crime: 1989 and 1995* (1998) 8

Carol J. DeFrances and Steven K. Smith, Bureau of Justice Statistics, U.S. Dept of Justice, *Perceptions of Neighborhood Crime, 1995* (1998).. 16

Dan M. Kahan, *Between Economics And Sociology: The New Path Of Deterrence*, 95 Mich. L. Rev. 2477 (1997) 24

Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 Va. L. Rev. 349 (1997) ..... *passim*

Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 Colum. L. Rev. 551 (1997) ..... *passim*

Edward J. Blakely and Mary Gail Snyder, *Fortress America: Gated Communities in the United States* (1997) 18

George L. Kelling & Catherine M. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities* (1996) 12

George W. Knox and Thomas F. McCurrie, *Gang Profile: The Latin Kings*, 4 J. Gang Res. 43 (1996) 10

Herbert C. Covey et al., *Juvenile Gangs* (2d ed. 1997) ..... *passim*

Illinois Criminal Justice Authority, *Research Bulletin: Street Gangs and Crime* (1996) 9-11, 13

James Q. Wilson & George L. Kelling, *Making Neighborhoods Safe*, Atlantic Monthly, Mar. 1982 12

TABLE OF AUTHORITIES—Continued

Page

James C. Howell, U.S. Dept of Justice, *Fact Sheet: Youth Gangs* (1997) 7-9, 15
James F. Short, Jr., *Poverty, Ethnicity, and Violent Crime* (1997) 17, 26
John Hagan, *Crime and Capitalization: Toward a Developmental Theory of Street Crime in America, in Developmental Theories of Crime and Delinquency* (Terence P. Thornberry ed., 1997) 24
John M. Hagedorn, *Gangs, Neighborhoods, and Public Policy, in The Modern Gang Reader* (Malcolm W. Klein et al. eds., 1995) 16
Los Angeles City Attorney Gang Prosecution Section, *Civil Gang Abatement: A Community Based Policing Tool of the Office of the Los Angeles City Attorney, in The Modern Gang Reader* (Malcolm W. Klein et al. eds., 1995) 14, 21, 26
National Gang Crime Research Center, *Gangs in Wisconsin: An Assessment of Law Enforcement Agencies* (1995) 7
New Jersey State Commission of Investigation, *Criminal Street Gangs* (1993) 7
New Mexico Criminal Information & Analysis Bureau, *Street Gang Update* (1994) 7
Office of Juvenile Justice and Delinquency Prevention, U.S. Dept of Justice, *1995 National Youth Gang Survey* (1995) 7
Pamela Irving Jackson, *The Police and Social Threat: Urban Transition, Youth Gangs, and Social Control, in Gangs and Gang Behavior* 447 (G. Larry Mays ed., 1997) 19
Terence P. Thornberry and James H. Burch II, U.S. Dept of Justice, *Gang Members and Delinquent Behavior* (1997) 11, 27
Virginia State Crime Commission, *The Study of Youth Gangs in Virginia* (1997) 7

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

No. 97-1121

CITY OF CHICAGO,
Petitioner,
v.
JESUS MORALES, *et al.*,
Respondent.

On Writ of Certiorari to the Supreme Court of Illinois

BRIEF OF THE CENTER FOR THE COMMUNITY INTEREST AS AMICUS CURIAE IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE* [1]

The Center for Community Interest ("CCI"), formerly known as the American Alliance for Rights and Responsibilities, is a national nonprofit organization dedicated to improving civic and community life and the public spaces that support it.[2] The CCI has had extensive experience

[1] Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for the amicus states that no counsel for a party authored this brief in whole or in part and no person, other than amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

[2] CCI's Board of Directors includes the General Counsel of Connecticut Mutual Life Insurance Company, a past president of Stanford University, a former Assistant Attorney General, and a past President of the American Bar Association.

assisting community groups in reclaiming their neighborhoods from the destructive effects of violence.

The CCI has actively promoted and defended a variety of measures designed to improve the quality of urban life. For example, the CCI helped draft the anti-aggressive solicitation measures that are currently in place in Washington, Baltimore, Berkeley, Cincinnati, Santa Cruz, and Long Beach. The CCI has defended similar ordinances in court and has published numerous articles on this subject in the legal literature (including the leading law review article on the history and constitutionality of panhandling controls) and opinion-editorials appearing in *USA Today, The Washington Post, The ABA Journal, The Sacramento Bee,* and *The Dallas Morning News.* The CCI has also defended drug-related evictions and security searches in public housing, regulations on urban camping, and service learning requirements and tailored drug-testing programs in public schools. Throughout these efforts, the CCI has emphasized the importance to communities of safe, welcoming, and civil public spaces, while challenging extreme assertions of rights that block community progress.

The CCI has advocated the increased utilization of civil abatement laws, including anti-loitering ordinances, in its speeches, workshops, and technical assistance. Civil abatement plays an increasingly important role in community policing efforts under deterrence theories of policing. Deterrence theories of policing suggest that enforcement of public order norms may have a positive snowball effect, and help prevent the commission of more serious crimes. Accordingly, statutes aimed at order maintenance offer an effective, reasonable balance between the imposition of harsh criminal penalties, which may adversely impact communities, and inaction, which leads to a downward spiral of violence. For example, the CCI recently helped to successfully defend the use of seizures, particularly of automobiles, in fighting open-air drug markets and prostitution markets. The CCI is also currently helping to defend Megan's Law statutes, which call for the registration and community notification of sex offenders, and "shaming penalties," such as required sign posting.

Narrowly tailored anti-loitering ordinances are also important deterrence tools. Loitering by criminal gang members intimidates law-abiding community members, and facilitates the commission of crime by gang members. Gang violence is an increasingly serious problem. Anti-loitering ordinances combat serious gang crime by enforcing a community's public order norms, thus making gang members less likely to commit more serious crimes.

The CCI views the constitutional challenge to the Chicago anti-loitering ordinance as an attempt to use the courts to prevent a measured and effective public safety initiative. The ordinance is the product of community initiative. It fights crime by the much less harsh means of prevention, rather than waiting to arrest more serious offenders, with much greater attendant disruption to the social order of the community. This anti-loitering ordinance represents an innovative way to deter community-destroying gang violence. It is more than fair, and much more rational and cost-effective, for communities to enlist law enforcement officials to help them prevent serious gang violence before it occurs.

STATEMENT OF THE CASE

This case arises out of Chicago community efforts to counteract escalating gang violence in their neighborhoods. The question presented to the Court is whether a city ordinance making it illegal for members of criminal gangs to loiter and fail to obey an order to disperse is impermissibly vague or offends substantive due process requirements.

The consolidated appeals at issue arise under the City of Chicago's 1992 gang loitering ordinance. The ordinance provides that "when a police officer observes a

person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more persons, he shall order all such persons to disperse and remove themselves from the area." Anyone refusing to obey such an order violates the ordinance. The Chicago Police Department later implemented regulations in General Order 92-4.

In 1995, the Illinois Appellate Court invalidated the ordinance as facially unconstitutional because it 1) infringed constitutionally protected rights of speech and assembly; 2) was unconstitutionally vague; 3) unconstitutionally criminalized a person's status; and 4) jeopardized Fourth Amendment rights by circumventing the probable cause requirement. *City of Chicago v. Youkhana*, 660 N.E.2d 34 (1995). Based on *Youkhana*, the appellate court then affirmed eight appeals taken by the City from decisions invalidating the ordinance in *City of Chicago v. Malcolm Ramsey, et al.*, and reversed six appeals taken by defendants from judgment in *City of Chicago v. Morales* (unreported decisions). The Illinois Supreme Court then consolidated these three judgments on appeal.

In 1997, the Illinois Supreme Court also invalidated the ordinance, affirming the appellate court's judgment. The court held that the statute was 1) impermissibly vague and 2) offended substantive due process requirements. The ordinance was vague because it did not give adequate notice of what constituted prohibited conduct, used inadequate language, and allowed for arbitrary enforcement. It offended substantive due process because the freedom to loiter is a fundamental right, which implicates the right to travel and the right to association. This Court granted a petition for certiorari filed by the City of Chicago.

SUMMARY OF ARGUMENT

Criminal street gangs are more pervasive and commit more violent crime than ever before. Gang violence threatens law-abiding residents of communities by attacking fundamental community norms. Law-abiding citizens are increasingly intimidated. Those who can afford to do so move out to suburbs or into gated communities. Those who cannot afford to leave retreat to their homes. The net effect is abandonment of many areas of our cities.

Some communities have chosen to resist the gang onslaught, however, by turning to new and innovative means of crime prevention through civil abatement statutes. Studies have found a strong correlation between citizens' perception of their community's level of social order, and their actual level of crime. That is, when social disorder exists, citizens become more and more fearful, retreating to their homes, leaving the public ways to criminal street gangs and their violence. On the other hand, restoring social order to a community helps prevent more serious crime.

Criminal law enforcement can help communities fight this encroaching violence by reinforcing extant community law-abiding norms. When community members feel that social order exists, community members also feel empowered to reinforce law-abiding social norms. Anti-loitering ordinances implement this deterrence theory with respect to criminal street gangs. Such ordinances are efficient, effectively raising the price of crime with less social cost to afflicted communities.

ARGUMENT

I. CRIMINAL STREET GANGS POSE AN INCREASINGLY SERIOUS THREAT TO COMMUNITIES AND LAW-ABIDING CITIZENS. INCREASED GANG PRESENCE AND VIOLENCE DESTROY COMMUNITY STABILITY BY PRESSURING LAW-ABIDING RESIDENTS TO RETREAT INTO THEIR HOMES OR INTO FORTRESS GATED COMMUNITIES.

Criminal street gangs increasingly threaten all of our communities—urban, suburban, and rural. The threat is particularly acute, however, in our cities: there, gangs ever more brazenly dominate neighborhoods struggling to maintain some sense of social order. Gang warfare over turf and drugs continually surpasses itself in extremes of violence. Law-abiding residents, fearful of being caught in the crossfire, are driven out. Those who cannot afford to leave retreat into their homes. Those who can afford to leave often do, retreating to the suburbs, or to modern, urban fortresses of gated communities. The net effect is a gradual abandonment of once thriving neighborhoods to hardened and aggressive gun-toting youths. This—the gradual erosion of ordinary urban freedoms—is the clearest and most immediate threat to rights faced by community residents who choose to remain.

Stable communities have social order-preserving mechanisms that reinforce each other and ensure a functioning social fabric. The presence of gangs strikes at community stability by weakening these mechanisms. Among other threats, law-abiding residents of any vulnerable community confront: the increasing scope of gangs, increasingly serious gang violence, the attendant weakening of existing community structures and of private enforcement initiatives, loss of a generation of youth, intimidation and pressure toward outmigration or retreat into fortress-like gated communities, and a self-perpetuating cycle of disorder.

A. Nationwide, Communities Are Increasingly Vulnerable To A Gang Presence Growing In Scope And Number.

Criminal street gangs are expanding across the nation at an unprecented pace, into all our communities—urban, suburban, and rural. More communities of many different types now recognize a significant gang threat and are desperately seeking new strategies to cope with the growing problem.[3] Gangs most seriously threaten troubled urban centers like Chicago and Los Angeles. In such cities, for example, 14% to 30% of urban adolescents will join a criminal street gang at some point.[4]

Increasingly, however, criminal street gangs have also expanded their reach to threaten less obvious target communities, in hitherto peaceful locales like the suburbs and towns of Virginia and Wisconsin.[5] Nationally, in 1995, more than half of all jurisdictions responding to a Justice Department survey reported youth gang problems; disturbingly, half of those affected cities and towns had populations under 25,000.[6] These communities themselves perceive gangs as an increasingly serious threat: 90% of the Justice Department's survey jurisdictions indicated

---

[3] Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, *1995 National Youth Gang Survey* 20 (1995) [hereinafter *1995 National Youth Gang Survey*].

[4] James C. Howell, U.S. Dep't of Justice, *Fact Sheet: Youth Gangs* (1997) (based on a longer report for the Department of Justice by the author, *Youth Gang Drug Trafficking and Homicide: Policy and Program Implications* (1997)) [hereinafter *OJJDP Fact Sheet*].

[5] *See 1995 National Youth Gang Survey, supra* note 3, at 20; *see, e.g.*, Virginia State Crime Commission, *The Study of Youth Gangs in Virginia* (1997); National Gang Crime Research Center, *Gangs in Wisconsin: An Assessment of Law Enforceemnt Agencies* (1995); New Mexico Criminal Information & Analysis Bureau, *Street Gang Update* (1994); New Jersey State Commission of Investigation, *Criminal Street Gangs* (1993).

[6] *1995 National Youth Gang Survey, supra* note 3, at 20.

that their gang problem would likely stay the same or become worse.[7]

Criminal street gangs have also grown in sheer numbers: from 1980 to 1995, the number of cities reporting street gang problems grew nearly sevenfold (to about 2,000 jurisdictions); the number of gangs reported grew eleven and a half times (to more than 23,000 gangs); and the number of gang members increased six and a half times (to more than 650,000 members).[8]

More disturbingly, the presence of youth gangs in schools is growing nationwide: in 1995, students age 12-19 were nearly twice as likely to report street gangs in their schools than in 1989 (28.4% versus 15.3%). Central city students were even more likely to respond that there were street gangs at their schools (40.7%) than were suburban students (19.9%) or students in nonmetropolitan areas in 1995. Yet, between 1989 and 1995, reports of gang presence increased in all three areas (e.g., in central cities, from 24.8% to 40.7%), leaving more and more communities increasingly vulnerable.[9] In short, for the many vulnerable neighborhoods already struggling to maintain some semblance of functioning community order, this alarmingly rapid increase in gang presence makes their efforts that much less likely to succeed.

B. Law-Abiding Residents Of Gang-Ridden Neighborhoods Face An Increased Threat Of Serious And Lethal Gang Violence.

The nature of gang violence has dramatically altered from the "small-scale confrontations and rare but impressive large 'rumbles' of the 1950s and 1960s into the more frequent and more heavily armed guerilla forays, gang-

[7] *OJJDP Fact Sheet, supra* note 4.

[8] *Id.*

[9] Bureau of Justice Statistics, U.S. Dep't of Justice, *Students' Reports of School Crime: 1989 and 1995*, at 8-9 (1998).

bangs, and drive-by shootings of the 1980s."[10] Cars make modern gangs more mobile and extend their criminal reach. Guns—increasingly available and increasingly powerful—make modern gangs significantly more lethal, as skyrocketing youth gang homicide statistics overwhelmingly show: nationally, between 1984 and 1993, the rate of homicides committed by juveniles shot up a shocking 169%.[11] Overall in 1980, there were only 633 youth gang homicides; in 1994, however, Chicago and Los Angeles alone recorded more than 1,000 gang-related killings.[12]

A Los Angeles study found that gang-related homicides are often more violent than nongang homicides.[13] A Chicago study found that nongang members injured by gang violence are likely to be very young or elderly and are slightly more likely to be female, and homicides of nongang members most likely resulted from crossfire.[14] Some

[10] Herbert C. Covey et al., *Juvenile Gangs* 34 (2d ed. 1997).

[11] A recent Chicago study documented gangs' use of firearms: between 1987 and 1994, firearms were used in 96% of all street gang homicides, 51% of aggravated batteries and 70% of aggravated assaults. An automatic or semiautomatic weapon was used in 47% of street gang-related homicides. In 1994, an overwhelming 232 of 240 gang-related homicides were committed with firearms. This is in marked contrast to the period from 1964 to 1994, when street gangs relied mostly on handguns, usually of .38 or lower caliber. From 1987 to 1994, however, the use of semiautomatic or automatic weapons in street gang homicides shot up from 11 to 150. Researchers attribute most of the dramatic increase in deaths from 1990 to 1994 to the increased use of these more powerful weapons. Illinois Criminal Justice Authority, *Research Bulletin: Street Gangs and Crime* 16-17 (1996) [hereinafter *Street Gangs and Crime*].

[12] *OJJDP Fact Sheet, supra* note 4.

[13] Covey, *supra* note 10, at 35.

[14] *Street Gangs and Crime, supra* note 11, at 13; *see also* Covey, *supra* note 10, at 46 (noting that Walter Miller's influential gang violence study found that women and children were the most likely nongang victims).

homicides, however, involved victims of mistaken identity: in Denver, a bicycle-riding youth was killed because he wore a baseball cap in the local gang's color.[15] In Chicago, a deaf-mute was killed because gang members thought he was flashing a rival gang sign. In fact, he had been merely using sign language.[16] Others have been deliberately targeted for various gang offenses, including testifying against members, refusing to join a gang, or simply to enhance gang members' reputations.[17]

Horrifying examples abound of innocent bystander victims accidentally caught in the crossfire or worse, intentionally sacrificed to preserve gang status or to send a message. For instance, in Nebraska, in 1990, five people were gunned down over six days in apparently gang-related shootings. The reason: no more than the necessity of "meeting one expectation associated with dangerous gangs: go out and find someone to hurt, even kill, if necessary and feasible."[18] In Los Angeles, in 1995, to the entire nation's horror, a local gang fired on a car returning from a barbecue but which had accidentally taken a wrong turn onto a dead-end street in Los Angeles's Cypress Park section. The gang fired on the car although they could "clearly see" that its pasengers were not rival gang members: the car's driver and a 2-year old boy were injured; his 3-year old sister was killed.[19] Or, from Chicago: in 1993, the powerful Latin Kings gang used gunfire and a Molotov cocktail against a home where a young gang member lived—to "send a message." Although the intended recipient was out, a 91-year old bedridden woman burned to death alive in his place.[20] Thus, gang violence

---

15 Covey, *supra* note 10, at 34.

16 *Street Gangs and Crime*, *supra* note 11, at 13.

17 *Id.*

18 Covey, *supra* note 10, at 33.

19 *Id.*

20 George W. Knox and Thomas F. McCurrie, *Gang Profile: The Latin Kings*, 4 J. Gang. Res. 43, 53 (1996). More frighteningly, some Chicago gangs may even have infiltrated the ranks of police officers. From 1992 to 1995, at least 15 police officers who were active gang members from various gangs were charged with crimes and forced to resign. *Id.* at 54.

truly takes a toll beyond its own on the community's weakest and most innocent members.

Gangs are also disproportionately responsible for all violent youth offenses. For example, in Rochester, gang members self-reported committing 68% of all adolescent violent offenses: in Seattle, 85%, and in Denver, 89%.[21] In Rochester, while only a third of youths joined gangs, gang members were responsible for 65% of all delinquent acts, including 86% of all serious delinquent acts. That same third was responsible for 69% of all self-reported violent acts, 68% of all property crimes, 60% of public disorder crimes, and 70% of the drug sales. Even after incarceration, former gang members are likely to continue in careers of violence.[22]

Gangs are also intimately linked to more apparently mild street gang offenses, mostly involving graffiti or vandalism. Such ostensibly minor acts, however, may often actually also be precursors to serious turf-related gang violence; areas of significant vandalism and graffiti often tend to coincide with areas of greater violence.[23] To community residents, the net effect is the same: fear and intimidation.

---

21 *See* Terence P. Thornberry and James H. Burch II, U.S. Dep't of Justice, *Gang Members and Delinquent Behavior* (1997) (discussing recent studies of gang member delinquency in Rochester, Seattle, and Denver); Covey, *supra* note 10, at 35 (citing studies).

22 Covey, *supra* note 10, at 35.

23 *Street Gangs and Crime*, *supra* note 11, at 14.

C. Increased Gang Presence And Violence Undermine Community Stability By Weakening Social Order-Preserving Mechanisms.

1. *Visible Community Disorder Induced By Gangs Reduces The Ordinary Reputational Price Of Crime, Discourages Private Enforcement Initiatives, And Engenders Disrespect For Existing Public Enforcement.*

Visible disorder is a "self-reinforcing cue" about the community's attitude toward crime. Potential lawbreakers infer that they are unlikely to be punished for more serious crime. Open disorder also conveys to individuals that their fellow community members are more likely to engage in such crime. In such an environment, individuals predisposed toward crime are much more likely to engage in it, because the deterrent price of crime has been lowered to the point of no longer deterring.[24]

Empirical studies bear out this relation, positively correlating disorder (physical and social) and robbery rates. Disorder invokes additional disorder: public drunkenness, prostitution, aggressive panhandling, and similar behavior signal that community members both engage in disorderly conduct, and that the community tolerates or is unable to enforce the basic norms of the community.[25]

Accordingly, the pervasive urban anxiety found in many neighborhoods likely results as much from fear of

---

[24] *See* Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 Va. L. Rev. 349, 368-71 (1997). This is Wilson & Kelling's "broken windows" theory: a community exhibiting broken windows invites more window breaking because it signals that no one in the community cares, so that breaking more windows appears to bring no social cost. *See* James Q. Wilson & George L. Kelling, *Making Neighborhoods Safe*, Atlantic Monthly, Mar. 1982, at 29; *see also* George L. Kelling & Catherine M. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities* (1996).

[25] Kahan, *supra* note 24, at 370.

disorder as from the realistic likelihood that residents will be victims of serious crime. Signs of disorder prompt fearful residents to retreat inside and to avoid getting involved in the neighborhood's problems.[26]

Gang activity is like public disorder, because it drives some law-abiding citizens out of the community, while discouraging private enforcement efforts by those who remain. Those law-abiders who do remain are nevertheless more likely to avoid the streets, where their presence alone would help to deter crime. They are also more likely to distrust their neighbors, and less likely to join with them in community crime prevention and monitoring efforts. The law-abiders' fear of crime thus facilitates even more crime: when individuals perceive that gangs control the environment, they become less likely to cooperate with law-enforcement officials, fearing it to be "futile and dangerous." [27] Alternatively, gangs may often actively intimidate potential witnesses, backing up their threats with serious violence.[28] Gangs profit, and gain community legitimacy.

Visible gang disorder also engenders disrespect for existing public enforcement authorities that are made to appear ineffective. For example, a city attorney described a Los Angeles gang-ridden neighborhood before it obtained a civil abatement injunction: "All day long, gang members stand at intersections known for drug sales, wear pagers, dress in gang attire, flash handsigns, and wave at and approach passing vehicles and pedestrians for what are certainly offers to buy drugs," while officers could not arrest gang members for any of these

---

[26] Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 Colum. L. Rev. 551, 580 (1997).

[27] Kahan, *supra* note 24, at 371-76.

[28] *See, e.g., Street Gangs and Crime*, *supra* note 11, at 13 (discussing Chicago gang retaliation on five victims for their willingness to testify against gang members).

"lawful" behaviors unless they observed an actual exchange of money for drugs. As a uniformed officer "typically observes only the lawful activity preceding the actual sale, officers must simply drive by in frustration while law-abiding citizens look on in disgust." [29]

Thus communities, once they become vulnerable to gangs, face the additional intractable hurdles of citizen withdrawal and cynicism over "ineffective" public law enforcement. Unfortunately, as well, once rampant crime inverts the ordinarily negative reputational effect of law-breaking, it can become increasingly self-sustaining: when juveniles see others committing crimes, they infer that their peers positively value law-breaking, and they are more likely to draw the same inference and engage in the same behavior.[30] The community's social fabric becomes increasingly distended.

2. *Vulnerable Communities Face A Self-Perpetuating Cycle Of Youth Gang Membership And Attendant Violence From Self-Reinforcing Perceptions Of High Criminality.*

Once gangs gain a foothold in a vulnerable community, their presence and activities serve as self-reinforcing preservation mechanisms, which work to build up the gang's social influence in the community. The probability of joining a juvenile gang is proportional to the existing level of juvenile gang activity in the neighborhood or community.[31]

Youth gang membership brings with it particular evils: youth gang members are often involved with drug use,

---

[29] Los Angeles City Attorney Gang Prosecution Section, *Civil Gang Abatement: A Community Based Policing Tool of the Office of the Los Angeles Attorney, in The Modern Gang Reader* (Malcolm W. Klein et al. eds., 1995).

[30] Kahan, *supra* note 24, at 357-58.

[31] Covey, *supra* note 10, at 224.

drug trafficking, and violence.[32] Gangs also have a serious disruptive effect on schools and can seriously threaten students and staff members. Many illegal acts occur when gangs are active in the schools, including assaults, extortion, vandalism, gang wars, and drug sales. Furthermore, visible gang activity such as loitering may, by making youths aware of the option of gang membership, make it more likely that individuals will join juvenile gangs.[33]

Accordingly, some communities develop increasingly high levels of gang activity while others do not, depending on whether juveniles think that others esteem and expect gang membership. These perceptions become self-reinforcing: in low-crime neighborhoods, juveniles believe that others disvalue gang membership, making it less likely that they will join, while juveniles in high-crime neighborhoods, although just as likely to see gangs as "violent and destructive," are more likely to believe that their peers admire gang members.[34] That destructive belief engenders a cycle of gang membership with its attendant violence that is extremely difficult for an afflicted community to break.

D. Increased Gang Presence And Violence Pressure Many Law-Abiding Community Residents To Retreat Into Their Homes Or Fortress-Like Gated Communities, Leaving Neighborhoods Increasingly Vulnerable To A Downward Spiral Of Disorder.

Increased gang pervasiveness and violence have provoked further weakening of vulnerable communities. In 1995, 7% of households nationally reported crime was a neighborhood problem. Of those neighborhoods, 44% (3% of total) said the problem was so objectionable that they wished to move; twice as many of these were cen-

---

[32] *OJJDP Fact Sheet*, *supra* note 4.

[33] Covey, *supra* note 10, at 28-30; *see also* Kahan, *supra* note 24, at 376.

[34] Kahan, *supra* note 24, at 372.

tral city households. These perceptions of neighborhood crime generally reflected actual crime victimization experience.[35]

Those who can't afford to move—often working class residents—retreat into their homes. For example, one recent study in Milwaukee found that although urban residents of poor neighborhoods had extensive kinship ties, less than one fifth of them felt their neighborhood was a "good place to live," and 52% said "they would move if they could." [36] Nevertheless, large numbers of working class African-American families still reside in these neighborhoods. Not all who want to leave can—so their neighborhoods "are a checkerboard of struggling working class and poor families, coexisting, even on the same block with drug houses, gangs, and routine violence." [37] Accordingly, there is a great deal of intra-community tension between these disparate groups. With a lack of effective community institutions, residents can "either ignore the gunshots in the night, arm themselves for self-protection, call '911'—or give in to the fear and despair by moving out." [38] "Respectable residents" who choose to remain confront "a growing street culture that increases community distrust of young people, victimizes neighborhood residents, and lures children into dangerous activities." [39]

Residents who can afford it, often do give in to "fear and despair" and move out. Law-abiding citizens are more likely to leave a neighborhood that is fraught with disorder. Their departure, however, begins a downward

---

35 Carol J. DeFrances and Steven K. Smith, Bureau of Justice Statistics, U.S. Dep't of Justice, *Perceptions of Neighborhood Crime, 1995*, at 1 (1998).

36 John M. Hagedorn, *Gangs, Neighborhoods, and Public Policy, in The Modern Gang Reader*, *supra* note 29, at 316, 319.

37 *Id.*

38 *Id.* at 320.

39 *Id.*

spiral for the community: the increased concentration of law breakers multiplies their interactions with each other, further reinforcing each individual law breaker's own criminal propensities.[40]

For example, in the 1980s, William Julius Wilson documented the move of many black working class families and the growing middle class out of the ghetto into more desirable neighborhoods. Wilson argued, however, that this urban outmigration of the middle class, and particularly the minority middle class, from core cities to the suburbs, took away an important "social buffer," made up of "community networks of informal social control." [41] Those who remained faced ensuing social isolation from mainstream institutions, values, and role models. For example, one social scientist described the "child-rearing dilemma of 'decent' parents who wish to impart conventional values to their children, but are constrained by fear that the children may be taken advantage of by the street kids." [42] That isolation from mainstream values becomes a major factor contributing to weakened social control at the community or neighborhood level, with the end result of increasing the probability of gang formation.[43]

Alternatively, those who can afford it have begun to construct walls between themselves and their surroundings, retreating to gated communities—residential areas with restricted access in which normally public spaces are privatized—in search of a "social bulwark against the

---

40 Kahan, *supra* note 24, at 371.

41 James F. Short, Jr., *Poverty, Ethnicity, and Violent Crime* 55 (1997) (citing William Julius Wilson, *The Truly Disadvantaged: The Inner City, The Underclass, and Public Policy* (1987)).

42 *Id.* at 56 (citing Elijah Anderson, *Violence and the Inner-City Poor* (1993)).

43 Covey, *supra* note 10, at 223.

general degradation of the urban social order." [44] While in 1985, there were only a handful of such "fortresses," in 1997, there are likely 20,000 gated communities with more than 3 million units.[45] This trend is fundamentally disturbing for any one who embraces democratic ideals—increasingly, society appears to be condoning one justice for those with money, and another sort for those without. We are abandoning both the civil republican ideals of our founding fathers and our cities, to violent gang influences. This is the greatest immediate threat to civil liberties confronting our urban communities.

II. ANTI-LOITERING ORDINANCES ARE A REASONABLE MIDDLE GROUND RESPONSE TO INCREASING GANG VIOLENCE THAT WORK BY SECURING PUBLIC ORDER NORMS AND STRENGTHENING THE ENTIRE COMMUNITY.

Nationwide, however, communities are increasingly taking steps to protect themselves and to resist the gang threat. When urban residents choose not to surrender, but rather, to enlist law enforcement resources to help them reclaim their communities, that effort should be lauded, supported, and emulated. Our communities must be empowered to react against the true threat to their civil standing from gang violence.

A. Nationwide, Communities Like Chicago Are Seeking New And Effective Ways To Resist The Increasingly Serious Threat Of Gang Violence.

Chicago is not alone in seeking to resist the devastating effects of gang violence. Having witnessed the failure of more traditional policing methods,[46] many other threat-

---

[44] Edward J. Blakely and Mary Gail Snyder, *Fortress America: Gated Communities in the United States* (1997).

[45] *Id.*

[46] In the 1960s, police began to focus more on serious crimes, measured by the number of arrests made, than on lesser crimes. At the same time, however, communities began to feel less secure. As one Chicago police officer noted, "we are arresting more gang members than ever before; we are getting more convictions than ever before; and we are getting longer sentences than ever before. But ironically, we have more gangs than ever before." Pamela Irving Jackson, *The Police and Social Threat: Urban Transition, Youth Gangs, and Social Control, in Gangs and Gang Behavior* 447, 448 (G. Larry Mays ed., 1997) (quoting 1989 testimony of Frank Radke of the Chicago Police Department before a national conference on youth gangs).

ened localities—from Los Angeles to Washington, D.C.—have reacted by passing a variety of innovative laws, which range from curfew measures to anti-loitering statutes to court injunctions against specific gang members.[47] All of these measures emphasize prevention and deterrence strategies over increased criminal sanctions. In order to meet the particular challenges of increased gang violence, communities have also strongly supported constrained expansions of police discretion, to help communities reassert their own law-abiding norms.[48]

Community support for anti-loitering legislation has been broad, particularly in certain predominantly minority communities where street-level drug dealing is endemic.[49] One scholar argued that "to deny street officers the informal powers to act intuitively and spontaneously in the face of [neighborhood] problems cuts at the very heart of the police function as it has evolved in the neighborhood context." When police do not have the authority to break up youth gangs intimidating their neighbors by congregating on street corners, or to take seriously "the street harassmen and threatening behavior common in many poor neighborhoods," the "poor and powerless are then the

---

[47] *See, e.g.*, Livingston, *supra* note 26, at 554-55 & nn.10-14 (citing various communities' experiences with civil injunctions, anti-loitering laws, and curfews).

[48] *See generally id.* (discussing shift toward increased police discretion).

[49] *Id.* at 623.

losers" as such offenses "are not perceived to be minor by the victims in the community." [50]

Residents of high crime-communities are much more likely to support gang-loitering ordinances, curfews, and other order-maintenance policies, which they perceive to be appropriately moderate yet effective devices for reducing crime.[51] Communities have implemented these policies in various ways, tailored to their particular needs, and depending on the pervasiveness of the problem. For example, one very small neighborhood, Norwalk, California, faced gang intimidation: gang members loitered during all hours, spread graffiti, trespassed, publicly urinated, used drugs and alcohol, and committed fire bombings. Predictably, residents frequently stayed inside, "ceding public streets and common areas to gang members and retreating to small homes and apartments where iron bars covered many windows," or just moved out of the neighborhood. The neighborhood successfully obtained an injunction against twenty-two named gang members.[52]

One small Los Angeles neighborhood has also successfully implemented order maintenance through civil abatement.[53] Again, in this case, police officers chose to obtain an injunction against specific gang members, enjoining them from committing certain gang-specific behaviors. Without civil gang abatement, uniformed police were unable to effectively enforce drug laws against street deal-

---

[50] *Id.* at 581.

[51] *Id.* at 622-23.

[52] *See* Livingston, *supra* note 26, at 551; *City of Norwalk v. Orange Street Locos*, No. VC016746 (Cal. App. Dep't Super. Ct. Aug. 25, 1994) (issuing preliminary injunction against gang members, which remains in place).

[53] Other California neighborhoods have also chosen to implement order-maintenance policing through injunctions. *See People ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal. 1997 (upholding injunction against gang-related conduct when gang's activities constituted a public nuisance in a particular neighborhood).

ers. Under civil gang abatement, however, police could prevent "imminent criminal activity by arresting people for prohibited patterns of conduct which are known to precede and facilitate these crimes." [54] Thus, officers could effectively impact a gang's drug profits, while simultaneously facilitating the community's effort to improve its quality of life for all its residents.

B. Order Maintenance Policing Effectively And Efficiently Deters And Prevents More Serious Crime By Reinforcing Extant Community Law-Abiding Norms.

Just as community disorder engenders increasing disorder and crime, reinforcement of extant community law-abiding norms engenders increasing social order and prevents more serious crime. Modern policing theory has undergone a "quiet revolution" to learn that, in cooperation with community efforts, enforcing community public order norms is one of the most effective means of combating all levels of crime.[55] By focusing on order maintenance and prevention, advocating a more visible presence in policed areas, and basing its legitimacy on the consent of policed populations, police can most effectively prevent the occurrence of more serious crime.

New York City's experience confirms this. Today, that city has much less crime than it did five years ago. From 1993 to 1996, the murder rate dropped by 40%, robberies dropped by 30% and burglary dropped by more than 25%, more than double the national average.[56] These drops are not the result of increased policed resources, but rather more effectively applied resources. While New York has not increased its law enforcement expenditures substantially more than other cities, since

---

[54] Los Angeles City Attorney Gang Prosecution Section, *supra* note 29, at 326.

[55] Livingston, *supra* note 26, at 562.

[56] *See* Kahan, *supra* note 24, at 367-73 (discussing New York's rapid crime reduction as result of maintenance order policing).

1993, the city began to focus intensively on "public order" offenses, including vandalism, aggressive panhandling, public drunkenness, unlicensed vending, public urination, and prostitution. This focus on order maintenance is credited for much of the crime reduction.[57]

Dan Kahan describes this phenomenon in terms of social influence. He suggests that individuals' perceptions of each others' values and beliefs can affect their own conduct. Thus, individuals' decisions to commit crimes "interact with and reinforce each other in various ways." [58] In particular, individuals are much more likely to commit crimes when they perceive that criminal activity is widespread, because they infer a low risk of being caught or that there is little stigma or reputational cost to them. That is, where crime appears rampant, individuals are less likely to form moral aversions to criminality.

Under this view, the most cost-effective means of deterring crime may be laws that shape individuals' perceptions of each others' beliefs and intentions.[59] Accordingly, strict enforcement of aggressive panhandling, prostitution, open gang activity and other visible signs of disorder may be justifiable, in order to provide proper signals about the community's attitude toward more serious forms of lawbreaking. Order-maintenance strategy—"when citizens obey norms of orderliness—and when authorities visibly respond to those who do not"—clearly signals that the community will not tolerate criminal behavior. Law-abiders are reassured, and themselves induced to actively discourage crime. In this way, "perception of obedience to law becomes reality." [60]

Traditional law enforcement would rely heavily on infrequent convictions for more serious crimes with severe penalties attached, instead of focusing on a generally

---

57 *Id.*

58 *Id.* at 350.

59 *Id.* at 351.

60 *Id.* at 371.

higher probability of conviction for lesser offenses. Kahan points out, however, that a low probability of arrest for serious crimes might suggest a high level of criminality. That perception would likely engender increased crime, and offset any efficiency gains secured by less frequent prosecution. Likewise, if the burden was placed on private citizens to defend themselves, their overt efforts might also convey a destructive message of widespread criminality. In such circumstances, it makes sense that public law enforcement should step in to reinforce community norms.[61]

C. Anti-Loitering Ordinances Reinforce Public Order Norms Of No Tolerance For Gang Activity.

Anti-loitering ordinances implement community-driven order maintenance policing citywide—appropriate to the extreme pervasiveness of Chicago's gang problem—but on a neighborhood scale. Preservation of neighborhood commons is essential to ensuring healthy and vital cities: "in vibrant neighborhoods, the peace and safety of public spaces are ordinarily kept not primarily by police, but by the people themselves." [62] Yet, where public order has begun to deteriorate, police intervention becomes increasingly necessary to "shore up" whatever sense of security remains.[63]

Gang loitering works to increase disorder. For example, a street where gang members loiter to conduct drug sales or even just to assert the boundaries of their turf is likely to experience decline, as law-abiding residents begin to see it "as a place where children should not play and where those with adequate resources should choose not to live." [64]

Gang anti-loitering regulations counteract that disorder by strengthening the community's social organization.

---

61 *Id.* at 371.

62 Livingston, *supra* note 26, at 558-59 (citing Jane Jacobs, *The Death and Life of Great American Cities* 29-54 (1961)).

63 *Id.* at 559.

"[They] increase the relative supervisional authority of parents and other adults, who are more likely to transmit law-abiding values and dispositions to juveniles than are other juveniles. . . . These policies . . . reduce community residents' fear of crime, which in turn increases their willingness to join leagues with others in combating it." [65] "Gang criminality is driven by social influence. When juveniles see others openly associating for the purpose of committing crimes, they understandably perceive that that's a way of life their peers respect." [66] Suppressing open gang activity turns that social influence around.

In terms of social capital, the increased devotion of law enforcement resources helps to shift social capital from criminal gang members, who have co-opted it through intimidation, back to law-abiding citizens.[67] Those citizens can then participate in the transmission of those public order norms to their children, engendering a positive cycle of community involvement.[68]

D. Anti-Loitering Ordinances Strike An Effective Balance Because They Are More Efficient Than Harsher Penalties, With Fewer Economic And Social Costs To The Community.

Order-maintenance policing strikes a reasonable intermediate balance between harsh criminal penalties and inaction. Anti-loitering ordinances in particular represent a

---

[64] *Id.* at 559.

[65] Dan M. Kahan, *Between Economics And Sociology: The New Path Of Deterrence*, 95 Mich. L. Rev. 2477, 2480 (1997) (citing Tracey Meares, *It's a Question of Connections*, 31 Val. U. L. Rev. 579 (1997)).

[66] *Id.* at 2488.

[67] *See generally* John Hagan, *Crime and Capitalization: Toward a Developmental Theory of Street Crime in America, in Developmental Theories of Crime and Delinquency* (Terence P. Thornberry ed., 1997) (discussing economic and social capital); Short, *supra* note 41 (discussing formation and weakening of social capital in gang-ridden neighborhoods).

[68] Kahan, *supra* note 65, at 2488.

middle ground solution "that deter[s] as well as or better than severe prison terms and that cost[s] much less." [69] They work effectively "without the need to resort to severe penalties for gang-related crime, a tactic that is costly for society, has a dismal track record, and destroys the communities from which gang members come." [70]

Conventional suppression strategies are ineffective in gang-threatened communities. Where gang activity is prevalent, individuals are more likely to act in an aggressive manner, in order to conform to gang norms of behavior. When numerous youths act according to these skewed norms, more are likely to turn to crime: widespread adoption of aggressive mannerisms sends skewed signals about public attitudes toward gang membership, and creates barriers to mainstream law-abiding society, which strongly disfavors aggression.[71]

Accordingly, policies that "raise the price" of gang activity can sometimes function at cross-purposes. If juveniles value willingness to break the law, delinquency may be seen as "status-enhancing." As penalties grow more severe, law-breaking gives increasing status. More severe punishments may also provoke unintended racist accusation, if community minorities view harsher penalties as unfairly applied to their particular groups. Thus, any strategy dependent on harsh penalties may in fact be "at war with itself." [72]

Strategies that instead attack public signals to juveniles' peers about the value of gang criminality are more effective. Gang anti-loitering laws do this, for example, by "authorizing police to disperse known gang members when they congregate in public places," or by "directly pro-

---

[69] *Id.* at 2479.

[70] *Id.* at 2488.

[71] Kahan, *supra* note 24, at 374-75.

[72] *Id.* at 375.

hibiting individuals from displaying gang allegiance through distinctive gestures or clothing." [73] By preventing gangs from flaunting their authority, such laws establish community authority while combating the perception that gangs have high status. As that perception weakens, so does the pressure to join gangs that youths might otherwise perceive.[74]

Such strategies also positively influence law-abiding adults. Gang-loitering laws augment law-abiders' confidence so that they can oppose gangs. When public deterrence predominates, individuals are much less likely to perceive that criminality is widespread and much more likely to see private precautions as worthwhile. When the community as a whole is again able to express its condemnation, gang influence quickly wanes.[75]

E. The Ordinance Is An Integral Part Of Community-Wide Efforts To Resist Gangs.

The most successful anti-gang programs combine effective gang suppression programs with targeted community aid efforts: increased social services, job placement, and crisis intervention.[76] For example, Los Angeles' civil abatement program was part of a coordinated effort to significantly reduce illegal criminal activity, including various community-based policing efforts such as Neighborhood Watch, graffiti abatement, building abatements, at-risk youth identification, and employment recruitment as well as the more traditional law enforcement efforts. Civil gang abatement together with other government and community-based efforts has reduced crime, and visibly improved the neighborhood's quality of life.[77]

Chicago has also implemented alternative community aid programs. Since 1992, for example, the Gang Violence Reduction Project has targeted Little Village to serve as a model gang violence reduction program. The program coordinates increased levels of social services—the carrot—in conjunction with focused suppression strategies—the stick. The result has been a lower level of serious gang violence among the targeted gangs than among comparable gangs in the area. Importantly, as well, the project also noted improvement in residents' perceptions of gang crime and police effectiveness in dealing with it.[78] Chicago's anti-loitering ordinance is the necessary "stick" of an effective gang violence reduction equation.

CONCLUSION

Numerous social and economic reasons encourage youth to join gangs. Any community response cannot expect law enforcement by itself to resolve this entrenched problem. Community programs directed to remedying the lack of social and economic opportunities for at-risk youth can address the underlying effects. Nevertheless, any holistic community response must also reinforce positive community responses: law enforcement must be given the tools to support community initiatives to take back their neighborhoods.

Accordingly, we urge the court to reverse the judgment of the Supreme Court of Illinois. We note that the decision below invalidated the gang loitering ordinance in its entirety. Reversal of that decision would not foreclose "as-applied" challenges if particular individuals believe that

---

[73] *Id.* at 376.

[74] *Id.* at 375-76.

[75] *Id.* at 376-77.

[76] *See* Short, *supra* note 41, at 194-98 (discussing successful programs coordinating both deterrence mechanisms and welfare provision).

[77] Los Angeles City Attorney Gang Prosecution Section, *supra* note 29, at 325.

[78] Thornberry & Burch, *supra* note 21, at 3.

the ordinance is being enforced against them in violation of the city's own implementing regulation or based upon some impermissible discrimination.

Respectfully submitted,

RICHARD K. WILLARD *
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

ROGER L. CONNER
Executive Director
CENTER FOR THE
COMMUNITY INTEREST
919 18th Street, N.W.
Suite 700
Washington, D.C. 20006
(202) 785-7844

* Counsel of Record
for *Amicus Curiae*

June 19, 1998